

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

NEWTOWN ENERGY, INC. ^{1/}

Employer

and

Case 9-RC-17586

UNITED MINE WORKERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in mining coal in Kanawha County, West Virginia where it employs approximately 125 underground miners. The record reflects that the Employer annually purchases goods valued in excess of \$50,000 from outside the State of West Virginia. The parties stipulated that Kanawha Eagle Coal, LLC is engaged in commerce within the meaning of the Act on the basis that it is located in the State of West Virginia and that it annually sells coal mined in the State of West Virginia valued in excess of \$50,000 directly to customers outside the State of West Virginia. The evidence shows that the Employer annually performs coal mining services valued in excess of \$50,000 for Kanawha Eagle Coal, LLC.

Accordingly, I find that the Employer is an employer engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} The Employer and Petitioner timely filed briefs which I have carefully considered in arriving at my decision.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit of approximately 125 production and maintenance employees employed by the Employer at its underground mine located near Winifrede, West Virginia.

Contrary to the Employer, the Petitioner would exclude Rick Lambert, yard man, from the petitioned-for unit on the basis that he lacks a sufficient community of interest to require his inclusion. For the reasons set forth below, I am unable to determine the unit placement of Lambert and hereby instruct my agent conducting the election to challenge his ballot if he appears at the polls to vote.

Contrary to the Employer, the Petitioner maintains that Mike Stanley, Sherman Combs and Timmy Fang, chief electricians; Daniel Gunnoe and Timmy Stevens, crew leaders; and Jamie Dotson, a belt person; are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the petitioned-for unit on that basis. The Petitioner would also exclude John Dunlop, surveyor, and James Loving, supply person, from the unit on the basis that they lack a sufficient community of interest to require their inclusion. The Employer would include them in the unit. The parties, however, agreed to refrain from litigating the status of these individuals and, in accordance with the further agreement of the parties, I shall permit these individuals to vote subject to challenge by either party. ^{3/}

Finally, the Employer contends that a unit limited to the production and maintenance employees at the Employer's underground mine is not appropriate and that the unit must also include approximately 20 preparation plant employees employed by Emerald Processing, LLC, herein called Emerald Processing, and about 10 to 12 loading dock employees ^{4/} employed by Winifrede Dock Limited Liability Company, herein called Winifrede Dock. In support of its contention, the Employer maintains that it is a single employer with Emerald Processing, Winifrede Dock and Kanawha Eagle Coal, LLC, herein called Kanawha Eagle. The Petitioner does not take a position as to whether the four companies constitute a single employer or whether it would be willing to proceed to an election if the preparation plant and/or loading dock employees are included in the unit. There is no history of collective bargaining affecting any of the employees at issue in this proceeding.

For reasons set forth below, I find that the Employer, Emerald Processing, Winifrede Dock and Kanawha Eagle are a single employer within the meaning of the Act but that the unit sought

^{3/} Although not absolutely clear, the record indicates that these individuals are carried on the Employer's payroll and are, therefore, employed by the Employer.

^{4/} The record does not indicate the number of employees currently employed at the loading dock, but it reflects that the target employment level when operations commenced there was about 10 to 12 employees.

by the Petitioner, limited to the production and maintenance employees employed by the Employer at its underground mine, is an appropriate unit for purposes of collective bargaining.

The record discloses that KE Ventures, LLC is a partnership formed in late 1999 or early 2000 between Kanawha Eagle Limited Liability Company ^{5/} with a 51 percent ownership interest and Snowberry Coal Company with a 49 percent ownership interest. Big Eagle, LLC and Kanawha Eagle are wholly-owned subsidiaries of KE Ventures, LLC. Big Eagle Rail, LLC and Winifrede Dock are wholly-owned subsidiaries of Big Eagle, LLC, while Emerald Processing and the Employer are wholly-owned subsidiaries of Kanawha Eagle. KE Ventures, LLC and its subsidiaries are collectively referred to in the record and herein as the Joint Venture. This evidence establishes that Kanawha Eagle, Winifrede Dock, Emerald Processing and the Employer share identical ownership interest.

The portal to the underground mine in which the Employer's employees work is about 500 feet from the preparation plant where the Emerald Processing employees work. A 2200 foot slope tube runs from a coal collection bunker located 1700 feet inside the mine to the preparation plant. The slope tube contains a slope conveyor belt which transports coal from the collection bunker to the preparation plant and a rail car which is used to lower supplies into the mine. The current active mining faces are approximately 1.5 to 2 miles beyond the collection bunker. The loading dock on the Kanawha River where the Winifrede Dock employees work is about 6 miles by road or rail from the preparation plant. Big Eagle Rail, LLC, a part of the Joint Venture, has a role in operating a railroad between the preparation plant and the dock but it contracts the work involved in the rail operation to an apparently unrelated company. The Joint Venture does not employ employees involved in the rail operations. The Joint Venture also has some apparent ownership interest in a mine known as Comfort Mine, located about 3.4 miles from the preparation plant. The Comfort Mine is operated by an unrelated contractor whose employees have no employment relationship with the Joint Venture. The Joint Venture has a landfill, also called the impoundment, near its preparation plant where it disposes of waste materials from the preparation plant. Employees working at the landfill are employed by a contractor unrelated to the Joint Venture.

Bob Ellis is the vice-president of operations for the Employer, Kanawha Eagle, Emerald Processing and Winifrede Dock. He appears to be the chief operating officer for the Joint Venture and is carried on the Employer's payroll. Kanawha Eagle does not have any employees. It owns all of the assets and coal reserves of the Joint Venture and its sole income is from the sale of coal. Kanawha Eagle covers the payroll and supply expenses of the Employer, Emerald Processing and Winifrede Dock by depositing monies in their bank accounts equal to those expenses. The only income of these three entities is the deposits they receive from Kanawha Eagle. Ellis described the Employer, Emerald Processing and Winifrede Dock as not owning anything and being only break even pass through corporations. However, it appears that they are the only entities in the Joint Venture which employs employees.

Ellis controls the labor relations for the employees within the Joint Venture. He determines staffing levels for the mine, preparation plant and loading dock and is the ultimate authority responsible for hiring decisions; however, supervisors from the mine, preparation plant and

^{5/} Kanawha Eagle Limited Liability Company is not the same business entity as Kanawha Eagle.

loading dock participate in the hiring process involving applicants for positions in their operations. Ellis determines the wage rates for all of the Joint Venture employees which are currently at \$17, \$17.50 or \$18.35 per hour for mine employees; \$16 or \$17 per hour for preparation plant employees; and \$11 to \$15 per hour for dock employees. Ellis determines the level of fringe benefits, such as holidays, vacations, insurance and retirement plan which are currently the same for all of the Joint Venture employees. Ellis creates an annual schedule of working and off days which is the same for all Joint Venture employees. The mine operates on two 9-hour production shifts per day plus a third maintenance and equipment relocation shift of unspecified length. The preparation plant operates three 8-hour production shifts per day. The dock operates on 1.5 shifts per day of unspecified length. The day shift mine crews begin work at 7:00 a.m. or 7:30 a.m. and the day shift preparation plant employees begin work at 7:00 a.m. The record does not reflect the starting time of the remaining mine or preparation plant shifts or for any of the loading dock shifts. Ellis is responsible for all disciplinary actions involving written warnings, suspensions and discharges. Individual mine, preparation plant or loading dock supervisors may take lesser disciplinary actions on their own initiative. The record does not specify the frequency of the issuance of disciplinary actions at or above written warnings nor does it reflect the nature or frequency of the lesser disciplinary actions. The companies within the Joint Venture share a common safety director, engineering services and purchasing functions.

Ellis' immediate subordinates are Odell Hensley, production superintendent; Ed Blackburn, maintenance superintendent; Ronald May, coal preparation superintendent; Ron Gallimore, transportation and quality control superintendent; Joe Bevel, engineering manager; and Cynthia Scott, administrative assistant. ^{6/}

The individuals who work at the mine are carried on the Employer's payroll. It appears that Hensley is in overall charge of mine production but the record is not clear as to whether he might also have supervisory authority over mine maintenance employees. Blackburn performs some unspecified maintenance functions in the mine and the record reflects that he schedules work for maintenance, actually performs maintenance work himself, and works with shift chiefs (presumably the shift foremen mentioned below). The record is unclear as to whether Blackburn actually supervises employees. Ralph Tanner, general mine foreman, is Hensley's only immediate subordinate. Rick Abebes and Bob Herndon are shift foremen who report directly to Tanner. Scott Lancianese, George Mayhew, Warren Schaffer, Randy Hinkle, Keith Johnson and Bobby Harper are section foremen who report directly to one of the two shift foremen. John Hensley is the out-by foreman who works in the mine but the record does not disclose the identity of his immediate superior. ^{7/}

^{6/} In accordance with the parties' stipulations, and based on the record as a whole, I find that Ellis, Odell Hensley, May and Gallimore are supervisors within the meaning of Section 2(11) of the Act; that Bevel is a professional employee having no subordinates; and that Scott is an office clerical employee. Accordingly, I shall exclude them from the unit.

^{7/} In accordance with the stipulations of the parties, and based on the record as a whole, I find that Tanner, John Hensley, the shift foremen, Abebes and Herndon, and the section foremen, Lancianese, Mayhew, Schaffer, Hinkle, Johnson and Harper, are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

Employees who work in the mine include: continuous miner operators who operate the machinery which extracts coal from the seam; roof bolters who insert metallic pins in the overhead areas of freshly mined areas to secure the mine roof; shuttle car operators who operate equipment to haul coal from the mining face to a conveyor belt for transport to the collection bunker; belt employees who perform manual labor in keeping the conveyor belt clear of spilled coal and blockages; ventilation employees who hang curtains to control the flow of air within the mine; supply employees who move supplies within the mine; and electrical/mechanical maintenance employees. All of these employees possess a statutorily required certification to work in an underground mine which is different from the certification required of preparation plant employees.

The Joint Venture also obtains the services of various contractors who perform specialized work within the mine and provide temporary manpower. Employees employed by these contractors are also referred to on the record as contract employees. The record does not reflect the regularity or frequency that contract employees perform work in the mine nor does it indicate whether the Employer supervises them or might otherwise have an employer relationship with them. In any event, in accordance with the agreement of the parties, I shall exclude the contract employees from the unit found appropriate.

The preparation plant employees are carried on Emerald Processing's payroll. Bill Farley, Larry Mills and Robert Goins are the shift foremen at the preparation plant who report directly to Ron May, the coal preparation superintendent.^{8/} The preparation plant receives raw coal from the mine via the slope belt and removes impurities from the coal to make it ready for sale. When coal is initially received at the preparation plant it undergoes a crushing and screening process to reduce the raw coal to pieces less than 2 inches in diameter. This crushed raw coal is transported by conveyor belt to raw coal silos for storage awaiting the cleaning process in which it is transported by conveyor belt back to the plant and mixed with a dense solution of water and magnetite causing the coal to float and the rock to sink, thereby separating clean coal from waste. The waste is then transported by conveyor belt to the landfill and the clean coal is transported by conveyor belt to clean coal silos to await shipment. The clean coal silos have conveyor capability to load clean coal into Joint Venture rail cars, CSX Railroad rail cars or trucks of independent hauling contractors. The Joint Venture transports CSX rail cars to the dock where they are stored on a rail siding until CSX picks them up for delivery to the customer. Coal loaded from the clean coal silos into trucks is normally delivered directly to the customer bypassing the dock, but some is hauled to the dock. Ellis described the employees at the preparation plant as being highly skilled, running an automated operation requiring some computer skills. An employee at the preparation plant sits in a control room in front of a computer monitoring and controlling the operation of the plant. Other employees walk around the plant greasing and cleaning equipment and making sure it is operating properly. A load out operator controls the conveyor equipment which loads clean coal from the silos onto rail cars. The preparation plant also has several maintenance employees.

^{8/} In accordance with the stipulation of the parties, and based on the entire record, I find that Farley, Mills and Goins are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

The individuals employed at the dock are carried on Winifrede Dock's payroll. Danny Young, who is described on the record as being the dock manager or the dock crew leader, reports directly to Ron Gallimore, the superintendent of transportation and quality control.^{9/} Coal transported to the dock by Joint Venture rail cars is loaded onto barges by the dock for delivery to customers. The Joint Venture rail cars are bottom dumpers which are placed over a conveyor belt and mechanically shaken to empty the coal onto the belt which loads the coal onto barges. Employees at the dock assist in this process of unloading rail cars. Coal arriving at the dock by truck is dumped on the ground for storage. Dock employees operate heavy equipment to load this coal from the ground onto the conveyor system for loading onto barges. The dock has some maintenance employees as well as some laborers who do shoveling, cleaning and greasing.

All of the raw coal produced by the Employer's mine is processed by the preparation plant. The Comfort Mine also sends raw coal to the preparation plant for processing which comprises about 14 percent of the preparation plant's total production. About 97.2 percent of the coal processed by the loading dock comes from the preparation plant with the remaining portion coming from outside sources. About 30 percent of the clean coal produced by the preparation plant is shipped directly to customers bypassing the dock.

A shop and a warehouse are used by both the mine and the preparation plant but no employees are assigned to work at the shop or the warehouse. Two fork lifts and a back hoe are made available to employees of the mine and the preparation plant for use in unloading and moving supplies. A maintenance truck moves between the dock and the preparation plant/mine site but the record does not disclose who operates that truck or the frequency or purpose of its operation. The Joint Venture furnishes separate parking lots for the mine and the preparation plant and a parking lot common to both, but employees may park wherever they wish. The mine and the preparation plant have separate bathhouses but employees may use either. Employees within the Joint Venture share common social functions. The Joint Venture furnishes uniforms to the dock and preparation plant employees and has ordered reflective clothing for the mine employees.

Larry McDonny was transferred from the dock to the preparation plant because the Joint Venture determined that he could be better utilized at the preparation plant. Chuck Bays was transferred from the preparation plant to the dock for health reasons. The record does not disclose when McDonny and Bays were transferred. Cynthia Scott, Ellis' administrative assistant, was recently transferred from Winifrede Dock's payroll to Emerald Processing's payroll. There is no evidence in the record of any other permanent transfers of employees among the companies within the Joint Venture. Length of employment tenure for vacation purposes continues to accrue despite these permanent transfers. In May 2001, mine employees were given the opportunity to select jobs within the mine by seniority. There is no evidence that they have been given any opportunity to select jobs at the preparation plant or the dock.

It appears that the Joint Venture commenced operations around February 2000. From that time until around June 2000, operations were limited to extracting rock from the mine and moving it by conveyor through the preparation plant for disposal at the landfill. During this

^{9/} As noted above, the Petitioner, contrary to the Employer, maintains that Young is a supervisor.

Spring 2000 period, the preparation plant was not operational but several employees including Rick Lambert, Tony Elkins and Tim Lambert worked in the preparation plant under the direction of Odell Hensley, mine production superintendent, and Ralph Tanner, general mine foreman, to facilitate moving the mine roof rock through the refuse conveyors to the landfill. In Spring 2000, the Joint Venture was in the process of hiring a substantial number of employees so that it would have a sufficient employee complement to begin actual coal production which commenced in June. Ellis testified that in the Spring of 2000, the two Lamberts and Elkins were on Emerald Processing's payroll.^{10/}

Robert Goodyear testified that he was employed by Emerald Processing at the preparation plant as its only electrician from May 2000 until January 2001. On two occasions while Goodyear was off work for deer hunting season (Thanksgiving 2000), the refuse belt at the preparation plant experienced electrical problems which were repaired by employees from the mine. Goodyear further testified that when the mine started up, mine and preparation plant employees would work together when the mine went down to "ungob" and unplug things that were stopped up (presumably conveyor belts). Goodyear estimated that the frequency of this working together was about 2 hours starting up over a month and a half period and that the breakdowns requiring the working together did not occur very often after that time. Mine employees are responsible for maintaining and repairing the portion of the slope belt inside the mine, preparation plant employees are responsible for the outside portion, and both groups may work on the middle portion, but the record does not reflect how often this occurs. Dock employees have occasionally been taken to the mine or plant to perform work or to observe the integration of the three facilities but the evidence does not specify the nature or frequency of the work performed. Ed Blackburn, the mine maintenance superintendent, has performed an unspecified amount of electrical work at the preparation plant.

Ellis testified that communication among the mine, preparation and dock is effected primarily through himself and his front line supervisors. Ellis relates that there was a lot of communication between the mine and preparation plant personnel on a cat walk near the static thicker in the yard, but the record does not reflect the nature or frequency of this communication or whether it is work related. Goodyear testified that he used a telephone to communicate with people in the mine about electrical problems and that he received direction from Odell Hensley or mine personnel. The frequency of such communication and direction is not specified in the record. Alvie Davis, a miner operator at the mine, testified that he did not have any work-related contact with preparation plant employees and that any such contact with the preparation plant would be through supervision.

Rick Lambert is a yard man who works primarily outdoors in an above-ground area, referred to on the record as the yard, in the immediate vicinity of the preparation plant and the mine portal. For reasons set forth above at footnote 10, it is not clear from the record on whose payroll Lambert is carried. Ellis described Lambert as a self starter who knows what he has to do and that he is supervised, at times, by Ellis, Odell Hensley, the mine production superintendent, or Bud May, coal preparation superintendent. Ellis guessed that Lambert earns

^{10/} Elsewhere in his testimony, Ellis related that Rick Lambert is currently on the Employer's payroll. Although Ellis testified concerning permanent transfers of employees among the companies within the Joint Venture, he did not mention any transfer involving Rick Lambert.

\$17 per hour. Lambert unloads and transports incoming supplies for both the mine and the preparation plant. He loads supplies on the slope tube rail car for lowering into the mine and operates a man-trip hoist which transports miners to and from their underground work areas. Lambert uses earth moving equipment to keep the yard organized and he is responsible for removing metal from the slope belt magnet. Lambert handles sump cleaning and drainage maintenance. In connection with his supply and slope belt responsibilities, Lambert has communication with both the mine and the preparation plant, the frequency of which is not specified. Lambert has operated a boom truck at the dock but the record does not reflect the frequency or number of times he has performed that function.

ANALYSIS:

Single Employer:

The test for finding single employer status is whether two or more businesses are sufficiently integrated so that they may be fairly treated as a single enterprise. The Board looks to four principal factors in arriving at that determination: (1) common management; (2) centralized control of labor relations; (3) interrelation of operations; and (4) common ownership or financial control. *Naperville Ready Mix*, 329 NLRB 174, 179 (1999). No single factor is controlling although the first three, which evidence operational integration, are more critical than the fourth. *Id.*

The evidence discloses that the Employer, Kanawha Eagle, Emerald Processing and Winifrede Dock have identical ownership and that they share common management and control of labor relations in the form of Bob Ellis. The fact that coal is extracted at the mine, processed at the preparation plant and shipped at the dock represents product integration in the form of sequential functions performed on the same product^{11/}, thereby creating an interrelation among the three operations. Based on the foregoing and the entire record, I find that the four entities constitute a single employer within the meaning of the Act. Although I have found that the four entities involved constitute a single employer, such a finding does not make the unit sought by the Petitioner limited to the Employer's production and maintenance employees inappropriate. I must apply the Board's community of interest test in determining the unit scope.

Unit Scope:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Company*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Company*, 322 NLRB 723 (1996); *Purity Food Stores*, 160 NLRB 651 (1966).

^{11/} See, *Black and Decker Manufacturing*, 147 NLRB 825, 828 (1964).

A determination that two or more entities constitute a single employer does not establish that an employer-wide unit is the only appropriate unit. *Peter Kiewit Sons*, 231 NLRB 76 (1977); *Lawson Mardon USA*, 332 NLRB No. 122 (2000). Analysis of single employer status focuses on ownership, management, operations and labor relations while the scope and composition of appropriate units in a single employer context involves examination of traditional community of interest factors. Thus, where two separate legal entities constitute a single employer, it is necessary to examine community of interest factors to determine an appropriate unit.^{12/} In analyzing community of interest among employee groups, the Board considers bargaining history; functional integration; employee interchange and contact; similarity of skills, qualifications and work performed; common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment. *Armco, Inc.*, 271 NLRB 350 (1984); *Atlanta Hilton & Towers*, 273 NLRB 87, 89 (1984); *J.C. Penney Co.*, 328 NLRB 766 (1999). There is no history of collective bargaining affecting any of the employees in this proceeding.

The immediate and intermediate supervision of the mine employees is separate from the that of the preparation plant and dock employees. Although the employees in the Joint Venture share common ultimate supervision in the form of Ellis, the employees at the mine have four separate levels of supervision (section foremen, shift foremen, mine manager and production superintendent) which are not shared by the other employees.

The work areas of the mine employees are physically separated from the work areas of the preparation plant and loading dock employees, not only by a 2 mile distance from the mine portal to the mining faces, but the mining employees also work underground. The fact that the mine portal is only 500 feet from the preparation plant does not represent any degree of mitigation to this physical separation because the mine portal represents a barrier between the work area of the mine employees and the work areas of the preparation plant and dock employees. This barrier is strengthened by the fact that the mine employees must possess a statutorily required certification to perform work in their work area.^{13/} See *Lawson Mardon*, supra, where the Board found a separate appropriate unit of employees based, in part, on their physical separation by an air lock door from other employees within the same building. Although I find it unnecessary to determine whether the presumption favoring single facility units is appropriate to the facts of this case, the physical separation is nonetheless relevant to determining whether the mine employees may constitute a separate appropriate unit. *Id.* at fn. 1.

The record clearly reflects that the mine employees perform the distinct function of extracting coal from the earth, that preparation plant employees perform the distinct function of crushing and cleaning raw coal, and that the loading dock employees perform the distinct function of loading clean coal onto barges. The distinctions among these functions are sharply drawn and the record reflects that they do not overlap. The distinctions in these functions is manifested in the payroll structure of the Joint Venture which allocates employees to a particular payroll based on their job function.

^{12/} *Id.* Because it is necessary to examine community of interest factors, the Petitioner's contention on brief that the separate legal status is independently dispositive of the unit issue is simply incorrect.

^{13/} The record reflects that some of the preparation plant or dock employees may, by happenstance, possess underground mining certificates, but this possession is not required of their positions.

On the basis of their separate supervision, work locations, job functions and payroll, I conclude that the mine employees constitute a recognizable separate and distinct group of employees within the Joint Venture. The record shows that the parties have virtually no difficulty in identifying which employees are mine employees and which are not. Ambiguity in identifying mine employees is manifested to a slight degree in the fact that the parties are not in agreement as to whether Rick Lambert, yard man, James Loving, supply person, and John Dunlop, surveyor, are appropriately included in the mine unit sought by the Petitioner.^{14/} These three employees perform functions in support of both operations and represent a potential link between the two functions. However, this potential link is minimized to insignificance by the fact that it involves only three employees between a group of 125 and another group of 20. See, *Lawson Mardon*, supra, where services performed by 60 of 148 employees in a separate appropriate unit in support of employees outside the unit did not mitigate the propriety of a separate unit.

This separate group identity of the mine employees is manifested in the lack of evidence regarding significant interchange and work-related contact between the mine employees and employees outside the unit sought by the Petitioner. The record discloses only three instances of permanent transfers of employees among the companies within the Joint Venture and none of them involved transfers into or out of the mine. The only quantifiable evidence of temporary interchange relates to two occasions in November 2000, when mine employees made repairs to the refuse belt at the preparation plant because the preparation plant electrician was on vacation. However, the record does not specify how many mine employees were involved in that repair or how much time they spent making the repairs. To the extent that three preparation plant employees spent about 4 months working in the preparation plant under mine supervision might be indicative of temporary interchange, it is rendered insignificant by the circumstances that the work was performed during the start up phase of the Joint Venture operations at a time when there was no normal coal production and would, therefore, not be typical of normal operations. *J. L. Hudson Company*, 155 NLRB 1345, 1348 fn. 9 (1965). Moreover, the record does not quantify the amount of work performed by Blackburn, the mine maintenance superintendent, at the preparation plant or the amount of work performed by dock employees at the mine. I am unable, therefore, to conclude that the performance of such work impacts the degree of employee interchange. Communication among the mine, preparation plant and loading dock is conducted primarily through supervision. To the extent that there is work-related contact between mine employees and preparation plant employees in the form of communication or working together, it appears that most of this contact involves situations in which the slope belt has become inoperable preventing the transportation of coal from the mine to the preparation plant, thereby shutting down those operations. Thus, such work-related contact is incidental to and not an integral part of the employees' normal job functions and arises in circumstances where the performance of normal job tasks is not possible. See, *McLean Hospital*, 234 NLRB 424, 426 (1978). When things are running as they should under normal circumstances, it appears that there is little, if any, need for work-related contact between mine employees and employees outside the mine. Although the record discloses that work-related contact was much more frequent when the Joint Venture initially commenced operations, such a degree of contacts no

^{14/} The unit status of the other persons whom the parties were unable to agree upon involves their supervisory status and does not involve community of interest considerations.

longer exists and, therefore, is not a basis to compel expansion of the unit as sought by the Employer.

The separate identity of the mine employees is enhanced by their longer working hours and their higher wage rates. It appears that the skill level of the mine employees may be similar to those of the preparation plant employees but the record discloses that the skills of the two groups are qualitatively different because the skills are applied to differing job functions. This qualitative difference in skills is evidenced by the different statutory certifications required of mine and preparation plant employees which also demonstrates that the mine employees must possess qualifications different from the other employees.

In arriving at my single employer determination above, I concluded, based, in part, on evidence of the integration of operations, that the mine, preparation plant and loading dock were interrelated operations. Although product integration is an important factor in a single employer determination, it is less significant in determining unit scope based on a community of interest analysis. *Wescom, Inc.*, 230 NLRB 1159 (1977); *Lawson Mardon*, supra. Thus, functional integration in a community of interest analysis involves close coordination of employee tasks and extensive employee contact indigenous to truly integrated operations. *Purnell's Pride*, 252 NLRB 110, 114 (1980). The evidence does not show that the mine employees here are required to coordinate their efforts with employees outside the mine in order to carry out their normal job duties nor are employees outside the mine required to coordinate their normal work with mine employees. As in *Purnell*, normal work is coordinated between mine employees and employees outside the mine through supervision and only in the most general sense.^{15/}

In view of the distinct supervision, work location, payroll, qualifications and job functions of the mine employees; their lack of work-related contact, interchange and functional integration with other employees; and their higher wages and longer hours, I conclude that the mine employees have a distinct community of interest separate and apart from the other employees within the Joint Venture.

I am mindful of other factors such as shared benefits, parking lots, bathhouses, equipment, warehouse, shops, days off and social functions which indicate a commonality of interest between the mine employees and the other employees in the Joint Venture. However, when such commonality is considered in the context of the factors indicating the strong separate identity of the mine employees, I am unable to conclude that it carries sufficient weight to require the inclusion of the preparation plant and loading dock employees in the unit of mine employees sought by the Petitioner. *Lawson Mardon*, supra; *Overnite*, supra.

The Employer relies upon *Gaspro, Ltd.*, 114 NLRB 833 (1955); *Consolidated Cement Corporation*, 117 NLRB 492 (1957); *South-East Coal Company*, 138 NLRB 562 (1962); *Exxon Company, USA*, 225 NLRB 10 (1976); and *NLRB v. Campbell Sons' Company*, 407 F.2d 969 (1969) to support its principal argument that due to the highly integrated nature of the operations of the Joint Venture, an appropriate unit must include the employees of the preparation plant and

^{15/} *Westcom* and *Purnell* involved product integration among multi-facility operations. However, in *Lawson Mardon*, supra, the Board, without applying the single facility presumption to the facts of that case, noted that product integration is less significant than other types of integration in determining an appropriate unit.

the loading dock as well as those in the mine sought by the Petitioner. Each of the cases relied upon by the Employer involve unit determinations in operations which include mines/quarries and processing plants. Like the circumstance in the instant matter, there was a high degree of product integration, represented by the fact that the plants processed the output of the mines/quarries, and labor relations were centralized over the entire operations. Product integration and centralized control were among factors considered in concluding that units limited to less than the overall operation were not appropriate.^{16/} However, as noted above, the advancement of technology has lessened the significance of product integration in determining an appropriate unit. *Black and Decker*, supra, 147 at 828; *Wescom*, supra; *Lawson Mardon*, supra, slip. op. p. 2; while employee integration has become more significant. *Purnell's Pride*, supra, 252 NLRB at 114.

In any event, the cases relied upon by the Employer are distinguishable on their facts. In *Gaspro*, the Board based its decision on centralized control and product integration without considering other community of interest factors. Subsequently, the Board in *Sohio Natural Resources*, 237 NLRB 1261 (1978), where there was total product integration and centralized control between a mine and a processing plant, found it necessary to consider other community of interest factors in arriving at its determination that a unit limited to the requested processing plant employees was appropriate. In *Sohio*, the Board distinguished *Exxon* (relied upon by the Employer) on the basis that in *Exxon*, there was a greater degree of employee interchange and contact than in *Sohio*. I note that the six to eight permanent transfers and isolated temporary interchange present in *Sohio* appear to represent a greater degree of employee interchange than is present in the instant matter. In *Consolidated Cement*, 46 percent of the plant employees in the unit sought were involved in temporary interchange with the quarry whereas in the instant matter, the degree of interchange is much less significant. The Court in *Campbell Sons'* found that quarry employees and processing plant employees were readily interchangeable and that they worked alongside or in conjunction with each other. In *Campbell Sons'* there was a higher degree of interchange and employee (as opposed to product) integration than is presented in the case at bar. In *Campbell Sons'* the petitioner sought to represent employees at one processing plant while excluding employees at other processing facilities within the same operation. Similarly, in *Exxon*, the labor organization sought to represent employees at a surface mine and processing plant while excluding employees at an underground mine. In each of those cases, the union was seeking to include some employees performing a function (mining or processing) while attempting to exclude other employees performing the same function. Here, as was the case in *Sohio*, the Petitioner is not seeking to represent a portion of employees performing a certain function (mining or processing) to the exclusion of others who perform the same function. Thus, I find that *Sohio* is more controlling on the facts present in the subject case than the precedents relied upon by the Employer and that *Sohio* supports a conclusion that the mine employees and processing plant/loading dock employees may appropriately be separated for purposes of representation.

^{16/} The exception is *South-East Coal*, where the unit sought was the overall unit including three mines and a preparation plant. Thus, *South-East* is inapposite to the instant case because it did not involve a question as to whether a less than overall unit was appropriate. Moreover, in *South-East*, the Board permitted the inclusion of the preparation plant as requested by the petitioner, thereby creating an overall unit, because the plant was merely a relocation of a preparation plant which had been historically included in a unit with the three mines. In the instant matter there is no such bargaining history which might affect the unit determination.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that a unit limited to the Employer's mine (production and maintenance) employees is appropriate for collective bargaining.

Rick Lambert:

Lambert performs functions in support of both the mine and preparation plant. The record, however, is unclear as to his supervision as well as by whom he is paid. I am, therefore, unable to determine the unit placement of Rick Lambert and hereby instruct my agent conducting the election to challenge his ballot if he appears at the polls to vote.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All production and maintenance employees employed by the Employer at its mine located near Winifrede, West Virginia, but excluding all preparation plant employees, loading dock employees, contract employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Mine Workers of America**.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-*

Gordon Company, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 6, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **November 13, 2001**.

Dated at Cincinnati, Ohio this 30th day of October 2001.

Richard L. Ahearn, Regional Director
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